No. 80357-9

SUPREME COURT OF THE STATE OF WASHINGTON

No. 56625-3-I

COURT OF APPEALS, DIVISION I

RAJVIR PANAG, on behalf of herself and all others similarly situated, Respondent

v.

FARMERS INSURANCE COMPANY OF WASHINGTON a foreign insurance company,
and
CREDIT CONTROL SERVICES, INC., d/b/a Credit Collection Services,
Petitioners

RESPONDENT RAJVIR PANAG'S ANSWER

TO PETITIONS FOR DISCRETIONARY REVIEW

Matthew J. Ide, WSBA No. 26002
Attorney for Panag, as Respondent

IDE LAW OFFICE
801 Second Avenue, Suite 1502
Seattle, Washington 98104-1500
Telephone: (206) 625-1326

Murray T. S. Lewis, WSBA No. 13307
LEWIS LAW FIRM
2400 East Roy Street
Seattle, Washington 98112
Telephone: (206) 223-7008

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I. IDENTITY OF RESPONDENT

Rajvir Panag, as an individual and the proposed class action representative herein, hereby submits her Answer to the Petitions for Discretionary Review filed by Farmers Insurance Company of Washington ("Farmers") and Credit Control Services, Inc. ("CCS").[1]

II. ISSUES PRESENTED

A. Should the Court accept review, when the Court of Appeals' Opinion simply follows well-established Washington precedent on the State's Consumer Protection Act?

B. Should this Court accept review on the invitation to add a "consumer transaction" requirement to the CPA, although neither Washington precedent nor the Statute itself contain such a requirement?

C. Does driving in Washington without auto insurance strip a person of the protection of the law?

D. Are businesses operating in Washington permitted to employ fraud and deception against the general public whenever such tactics are more economically efficient than honest and truthful dealings?

III. STATEMENT OF THE CASE

Panag was in an automobile accident with Deven Hamilton, a Farmers insured. Panag did not have liability insurance at the time, so Farmers made payments to or for Hamilton under his UIM coverage.

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[1] Panag incorporates by reference the arguments made by Respondent Stephens in the related *Stephens v. Omni Insurance, et al.* matter, for which review is concurrently being sought by defendant CCS (S. Ct. No. 80366-8).

Internally, Farmers concluded that its own insured, Hamilton, bore the majority of the responsibility for the accident. Because of this, Farmers knew that even if it might be subrogated (to the extent of its payments) to any claim of Hamilton's, it had no legitimate basis to claim the entire amount of those payments. Indeed, by its own calculations, Farmers believed that, at best, it could assert a claim for about one-third of the payments it had made for Hamilton.

Rather than follow a legitimate process of asserting and proving its subrogated tort claim, however, Farmers instead contracted with CCS, a licensed collector of consumer debt obligations. And despite Farmers' calculations as to the amount it might plausibly claim, Farmers engaged CCS to get *all* of the money it had paid out for Hamilton. In other words, Farmers wanted to extract from Panag an amount that would, by Farmers' own calculations, result in a windfall of nearly *three times* the amount to which it believed it could even lay claim.

In accord with this commercial arrangement, CCS went after Panag for the money. Pretending that Farmers' inflated, unliquidated, subrogated tort claim was an actual debt, due, certain and owing, CCS sent Panag a "Formal Collection Notice" for the purported "Amount Due." Additional, progressively more threatening collection notices followed. Of course, no such debt existed – not the inflated amount sought by Farmers, nor the lesser amount of its apportioned subrogation claim. At best, Farmers had the same right as Mr. Hamilton: the right to assert and

try to prove a tort claim against Ms. Panag. But just as Panag owed no "debt" to Hamilton, neither did she owe a debt to Farmers or CCS.

Many of the thousands of Washington residents targeted by this scheme – whether because of deception, intimidation, or both – paid money (*over $1.5 million*) to CCS and Farmers for these phony "debts." Others, while not paying the phony debts, undoubtedly suffered other injury or damage. Ms. Panag, for example, was forced into action by the aggressive, threatening "collection notices" she received, and incurred various costs and expenses to investigate, react to, and protect herself from the scheme, including the prophylactic purchase of a credit report.

IV. ARGUMENT

The Court of Appeals decision closely and faithfully follows the thorough analytical framework that this Court set out in *Hangman Ridge*. Petitioners, unhappy with the logical conclusion of that analysis, ask this Court for review. To support their request, Petitioners assert that the CPA only covers consumer sales transactions, although this contention is contrary to both the Act and case law. In short, this Court long ago resolved the question: our CPA does not require a consumer transaction.

Both Petitioners also claim that the Court of Appeals ignored the mandate of the Washington Legislature. CCS tries to turn an Act that expressly provides it be liberally construed to protect the public into a narrow sales fraud law. Farmers, for its part, resorts to virtual name calling, drenching its petition with sneering, sniping invective directed

against the plaintiffs, and those like them, apparently trying to lay claim to the moral high ground. Farmers essentially argues that plaintiffs are scofflaws who threaten the fabric of society,[2] and who are thereby entitled to none of the law's protections, and that Petitioners' deceptive, unlawful conduct should be excused because plaintiffs are bad people who only got what they deserved. Farmers' ostensible moral outrage seems affected, however, if not outright ironic, given that it tried to shake down Panag for three times the amount Farmers itself calculated it could claim.

As before, Petitioners cite the patently inapplicable and unhelpful FDCPA, wanting it both ways. On one hand, they recognize that the FDCPA is inapplicable (if not, their conduct would plainly violate it). But on the other hand, Petitioners complain that the Court of Appeals was not guided by this patently inapplicable statute.

Farmers argues that the Court of Appeals incorrectly ruled that Panag's costs and expenses constituted injury under the CPA. This factual disagreement, however, does not provide a valid basis for review. Even so, the law on this element is settled: any injury, no matter how slight or whether even quantifiable, satisfies the CPA. The facts on this issue are also clear: Panag spent money and incurred expenses that she would not have incurred but for the deceptive collection notices.

Like corporate defendants do in nearly every case, both Petitioners

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[2] Fiery language in a brief is one thing, but Farmers' hyperbolic rhetoric goes a bit far when it all but calls Ms. Panag a "threat ... to the people of this state." Farmers Pet. at 6.

include the usual over-the-top, sky-is-falling arguments, claiming that the decision below will end the ability to pursue subrogation recoveries, and that it will result in CPA liability of unimaginable proportions. As usual, it is a shrill, but false alarm. In the first place, it has always been the law in Washington that businesses cannot engage in fraud or deception against the public – this is nothing new. Second, Petitioners ignore that, in accordance with *Hangman Ridge*, CPA liability does not lie until *all five elements* are established. These five elements, collectively, easily provide a sufficient check on CPA liability. Moreover, if they were not sufficient, it would be a matter for the Legislature. In short, none of Petitioners' arguments provide a valid reason for this Court to accept review.

A. "Any Person" Injured by an Unfair or Deceptive Act Can Pursue a CPA Claim.

1. The Analysis Starts & Ends with the Language of the Act

First, and most importantly, the plain language of the Act clearly provides that: "**Any person** who is injured in his or her business or property by a violation of [the CPA] may bring a civil action …." *See* RCW § 19.86.090 (emphasis added). Making it even more clear, the Act expansively defines the operative term, person: "'Person' shall include … natural persons, corporations, trusts, unincorporated associations and partnerships." RCW § 19.86.010(1). Nowhere does this language indicate that the Legislature even wanted to limit, much less actually did limit, prohibitions on unfair business practices to consumer sales transactions.

Given the simple, straightforward language of the Statute, there is nothing further to analyze. Indeed, if the Court of Appeals had held otherwise, and imposed a limitation that appears nowhere in the Act, it would have constituted legislating from the bench.

2. The "Legislative Mandate" of the CPA Is That It Be Broadly and Liberally Construed to Protect the *Public*

The Legislature specifically instructed how the CPA is to be read and applied: the CPA "*shall* be *liberally* construed [so] that its beneficial purposes may be served." RCW § 19.86.920. Furthermore, the Legislature also made it clear that the Act was intended to protect the Washington public in general, using that term consistently. For example, the Act prohibits, *inter alia*, "unfair, deceptive, and fraudulent acts or practices in order to protect *the public*." *See* RCW § 19.86.920 (emphasis added). It also provides that the Act was not designed to prohibit activities "which are not injurious to the *public* interest." RCW § 19.86.920 (emphasis added). Similarly, the Act states that it applies to "any" commercial activity that, "directly or indirectly," affects "*the people of the State of Washington.*" *See* RCW 19.86.010(2) (emphasis added). In any of these provisions the Legislature could have specified that it was only interested in protecting those involved in consumer sales transactions. It did not, and instead continually referred to the people of Washington, the public or the public interest. The Legislature is presumed to have understood the meaning of the broad terms it chose to use.

From the foregoing it is clear that the CPA is concerned with exactly what we have here: protecting the Washington public against overreaching businesses. Contending that the Act is a narrow consumer sales fraud law, Petitioners make the unhelpful observation that the Act's short title is the "Consumer" Protection Act.[3] The actual provisions of a statute determine its meaning and reach, however, not chapter headings, a short title or other miscellany.

Farmers complains that the Court of Appeals failed to read the Act as a whole. Reading the Act as a whole, however, merely demonstrates that Petitioners' position cannot be reconciled with the Act. Specifically, Petitioners cannot (and don't try to) explain how the CPA can be limited to "consumers" when several provisions plainly address improper practices directed against other businesses. *See* RCW § 19.86.020 & .050 (unfair methods of competition); RCW § 19.86.030 (restraints of trade); RCW § 19.86.040 (monopolistic practices).

At bottom, the question of standing in a CPA case usually comes down to determining whether a plaintiff is logically situated to be a private attorney general to enforce the Act and protect the public interest. As the Court of Appeals astutely noted: "The recipient [of the deceptive

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[3] The audacity of some of Farmers' misstatements is astounding. According to Farmers, the Legislature enacted a "*specific section* that *unambiguously states its purpose.*" Farmers Br. at 7 (emphasis added); *see also* Farmers Br. at 8. True enough. But Farmers repeatedly cites RCW § 19.86.910, the section that simply states the "Short title." The section that actually "unambiguously states [the Act's] purpose" is RCW § 19.86.920, titled, logically enough: "Purpose – Interpretation – Liberal construction."

collection notices] is a logical 'private attorney general' to argue that such deception is injurious to the public interest." Slip Op. at 26-27.

3. This Court Has Already Recognized the Mandate that the CPA Be Broadly and Liberally Construed

As discussed above, the express mandate from our Legislature is for courts to recognize that the CPA is an important remedial statute that must be construed liberally and broadly to protect the public from overreaching businesses. The Supreme Court has stated that it recognizes and is determined to follow this mandate. *See Hangman Ridge v. Safeco Title*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986) ("This court continues to give effect to the intended broad construction of these terms."). Just weeks ago, this Court reiterated the point, along with the fact that the CPA is designed to protect the interests of the *public in general*: "Private citizens act as private attorneys general in protecting *the public's* interest against unfair and deceptive acts and practices in trade and commerce." *See Scott v. Cingular Wireless*, __ Wn.2d __, No. 77406-4, Slip Op. at 9, 10 (July 12, 2007) (citing *Lightfoot v. MacDonald*, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976) (emphasis added)). The Court of Appeals opinion is entirely consistent with these observations.[4]

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[4] As is other case law. *E.g., Dwyer v. J.I. Kislak Mortgage Corp.*, 103 Wn. App. 542, 547-48, 13 P.3d 240 (2000) ("The Washington Legislature passed the [CPA] ... to protect *Washington citizens* from unfair and deceptive trade and commercial practices.") (emphasis added; citations omitted); *State Farm v. Hunyh*, 92 Wn. App. 454, 458, 962 P.2d 854 (1998) ("The CPA is to be liberally construed to serve its purpose, i.e., to protect the *public*, and foster fair and honest competition.") (emphasis added).

4. Washington Case Law Has Already Held That There Need Not Be a Consumer Transaction for a CPA Claim[5]

Hangman Ridge resolved the question of whether a consumer relationship is required for a CPA claim. There, the Supreme Court took great pains to set out everything required of a CPA plaintiff, specifying five – and only five – requisite elements: (1) an unfair or deceptive act or practice; (2) occurring in the conduct of trade or commerce; (3) that affects the public interest;[6] (4) causing (5) injury to plaintiff's business or property. 105 Wn.2d at 785-787, 792. Nowhere is there any mention of a requirement that a consumer relationship exist. A few years later, the Supreme Court pointed out this very fact:

> The leading CPA case of *Hangman Ridge* ... does *not* include a requirement that a CPA claimant be a direct consumer or user of goods or in a direct contractual relationship with the defendant.

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[5] In a surprisingly blatant violation of the page limitations for Petitions, Farmers filed 8 pages of Farmers' own case summaries for 96 admittedly selective cases. This material is improper, should not be considered by the Court, and Respondent asks that it be struck.

In addition, the self-serving "summaries" are entirely suspect. Besides inexplicably omitting *Hangman Ridge*, for example, Farmers lists the recent *Holiday Resort Comm'y Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210 (2006), as being a case where a "consumer" relationship existed. But in that case: "It is undisputed ... there is no statutory or contractual relationship between the [plaintiffs] and [defendant]." *Id.* at 219. Indeed, the Court of Appeals opinion at issue here made this very observation. *See* Slip Op. at 25 ("The defendant in [*Holiday Resorts*] had no contractual or statutory relationship with the tenant plaintiffs."). Moreover, while there are other misstatements or mischaracterizations, there is simply no way to respond to each them within the page limitations for this Answer. For this reason also these improper materials should be rejected in their entirety.

[6] CCS's argument also ignores that the analysis of the "public interest" element explicitly recognizes that the CPA covers more than just "consumer transactions," as the first step in that analysis involves determining whether the matter involves primarily a "consumer transaction" or a "private dispute." If the Act only applied to "consumer" transactions, this part of the analysis would serve no purpose and would not exist.

> Although the consumer protection statutes of some states require that the injured person be the same person who purchased goods or services, *there is no language in the Washington act which requires that a CPA plaintiff be the consumer of goods or services.*

Physicians Ins. Exch. v. Fisons Corp., 122 Wn.2d 299, 312-13, 858 P.2d 1054 (1993) (emphasis added; citations omitted).

Other Washington cases have confirmed that there need not be a consumer or contractual relationship between a CPA plaintiff and the defendant. In fact, there need not be any particular relationship between the parties, other than the requisite causal relationship between the defendant's deceptive or unfair business activities and the injury or damages sustained by a plaintiff.

For example, in *Schmidt v. Cornerstone Investments*, 115 Wn.2d 148, 795 P.2d 1143 (1990), plaintiffs sued a number of defendants in a matter involving a real estate investment gone bad. One defendant, Austin, had obtained an essentially fraudulent appraisal of the property in question. *Id.* at 153. Austin had apparently provided the appraisal to Cornerstone Investments in connection with his sale of the property to Cornerstone, and Cornerstone then provided the appraisal to Pacific Home Equity in order to help secure $75,000 of financing. A Pacific Home Equity sales agent then went to the Schmidts, provided them with the appraisal, and convinced them to put up the $75,000. *Id.* at 154. In short, Austin had absolutely no relationship with the Schmidts.

On appeal, Austin argued that the CPA claim failed as to him

because there was no link between him and the Schmidts. *See id.* at 167. The Supreme Court, disagreed, pointing out that the only link required is one between the unlawful conduct and the resulting injury or damages – not a link between the parties themselves:

> Austin asserts that a causal link must exist between plaintiffs and himself in order to satisfy this part of the test. *This is incorrect.* Instead, the causal link must exist between the deceptive act (the inflated appraisal) and the injury suffered. *Travis* [*v. Washington Horse Breeders Ass'n, Inc.*, 111 Wn.2d 396, 407, 759 P.2d 418 (1988)]; *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 741, 733 P.2d 208 (1987). There is no doubt such a causal link exists in this case.

Schmidt, 115 Wn.2d at 167-68 (1990).

In *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 741, 733 P.2d 208 (1987), the alleged unfair business practice was not even directed at the plaintiff, Nordstrom. Instead, the CPA claim arose from conduct by the defendant that had the capacity to deceive *members of the public* who were not even parties to the suit. In other words, although the defendant's business practice was not directed at the plaintiff, the plaintiff possessed a viable CPA claim because the conduct caused it harm. *See id.* at 733.

Similarly, in *Northwest Airlines, Inc. v. Ticket Exchange, Inc.*, 793 F. Supp. 976 (W.D. Wash. 1992), the CPA claim was based on a ticket broker's brokering of Northwest's frequent flier awards to air travelers. The ticket broker had absolutely no dealings with Northwest, however, and so challenged Northwest's standing for "lack of a 'direct consumer relationship' or 'transaction' between the parties." *Id.* at 979. The court

rejected the argument, finding no such requirement existed, and granted Northwest summary judgment on the CPA claim. *Id.* at 979-80. In *State Farm v. Huynh*, 92 Wn. App. 454, 962 P.2d 854 (1998), State Farm sued a chiropractor under the CPA for authoring false injury reports. Although the court did observe that State Farm was akin to a purchaser of the chiropractor's services for the benefit of its insureds, the fact is that State Farm never actually paid for the reports or the bills, and thus never engaged in *any* transaction with the chiropractor. See id. at 458.

Finally, the recent *Holiday Resort* case provides further support:

> As a general rule, and as a matter of legislative intent, neither the CPA nor case law require privity of contract in order to bring a CPA claim alleging an unfair or deceptive act or practice. And on numerous occasions, our courts have rejected the argument that a contractual relationship must exist to sue under the CPA for an unfair or deceptive act or practice.

134 Wn. App. at 219-20 (finding valid CPA claim, even though there was no relationship between plaintiffs and the defendant).

5. This Case Does Not Involve a Per Se CPA Claim or a CPA Claim Based on Insurance Bad Faith

CCS again cites cases that concern whether a person who is not a party to an insurance contract can assert a CPA claim against the insurer based on allegations of bad faith. *E.g., Green v. Holm*, 28 Wn. App. 135, 622 P.2d 869 (1981); *Marsh v. General Adjust. Bureau, Inc.*, 22 Wn. App. 933, 592 P.2d 676 (1970). These have no application here, as Panag has not asserted a *per se* CPA claim based on an insurer's bad faith breach of

contractual obligations. In any event, nothing in these bad faith cases supports the proposition that an insurance company can act unlawfully toward any person, as long as that person is not one of its insureds. *Cf. Dussault v. Am. Int'l Group, Inc.*, 123 Wn. App. 863, 870-71, 99 P.3d 1256 (2004) (non-insured *adversary* of an insurer could nonetheless assert misrepresentation claims against the insurer).

6. Panag Was the Target of Defendants' Commercial Activities

Although a plaintiff need not be in the "chain of commerce" as petitioners contend, even if such a requirement did exist, the facts established that Panag was well inside the chain of commerce here. Indeed, it is undisputed that Panag was the **target** of the commercial arrangement between CCS and Farmers – indeed, the very purpose, end and aim of that arrangement. Moreover, by sending its collection notices to her, CCS in fact initiated a transaction directly with Panag.[7]

B. Off Point Statutes or Cases From Other States Are Irrelevant

1. The FDCPA Is Inapplicable and Unhelpful

Petitioners assert our courts should be guided by complementary federal law in construing the CPA, but then ignore the most analogous federal law, the Federal Trade Commission Act, 15 U.S.C. §§ 41-51 ("FTC Act"), which deals with unfair trade practices and methods of

[7] That the transaction was not completed is of no moment, as long as Panag sustained injury or damages as a result. *See e.g., State Farm*, 92 Wn. App. at 458.

competition. *See, e.g.*, 15 U.S.C. § 45(a)(1). Instead, petitioners turn to the Fair Debt Collection Practices Act ("FDCPA"), disingenuously pretending that this case involves a collection matter. This, of course, is untrue: it is indisputable that no debt ever existed here.

In any event, the most that can be said about the FDCPA is that it does not provide a basis for relief here, and is thereby simply irrelevant. In fact, the FDCPA expressly provides that it does not affect any state law unless that law is both inconsistent with the FDCPA *and* affords *less protection* than the FDCPA. *See* 15 U.S.C. § 1692n. Neither is true here.

In arguing that the FDCPA is informing on this case, CCS cites *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998), *Turner v. Cook*, 362 F.3d 1219 (9th Cir. 2004), and *Betts v. Equifax Credit Info. Servs., Inc.*, 245 F. Supp. 2d 1130 (W.D. Wash. 2003). Claiming the cases are directly on point, CCS ignores the most obvious difference: unlike our CPA, the FDCPA expressly limits it applicability to *consumer transactions*. *See* 15 U.S.C. § 1692a(5) (definition of "debt" specifically includes the terms "consumer" and "transaction"); *see also* 15 U.S.C. § 1692a(3) (defining the term "consumer").

Farmers' arguments as to the FDCPA, while ever-shifting, are similarly meritless. Farmers seems to argue that the FDCPA actually should apply to these facts, but long ago Farmers already took the position that the FDCPA does not apply here. Moreover, if the FDCPA did apply, it is clear that the conduct here would have violated several provisions,

including 15 U.S.C. § 1692(a)(e)(2)(A) (prohibition against using "false, deceptive, or misleading representation or means in connection with" collection efforts). Application of the FDCPA would provide no respite.

Farmers also argues that the Court of Appeals should have followed the FDCPA's definition of "debt," averring that the Court was not free to ignore the definition given that this case involves "*more culpable* conduct than non-payment of consumer obligations." (Emphasis in original.) Ignoring for the moment that this is a complete *non-sequitur*, it is hard to understand what Farmers is even talking about as it is indisputable that Panag owed absolutely *nothing*.[8]

In short, the Court of Appeals did not err in ignoring the FDCPA because, both by its terms and the positions previously staked out by petitioners, it is simply inapplicable.

2. Off Point Cases or Statutes From Other States Cannot Change the Act That Our Legislature Enacted

Petitions suggest looking to other states for guidance, each citing *Camacho v. Automobile Club of So. Cal.*, 142 Cal. App. 4th 1394, 48 Cal. Rptr. 3d 770 (Cal. Ct. App. 2006). But unlike this case, which involves a claim based on the "deceptive" prong of our CPA, *Camacho* only involved an analysis of whether the conduct at issue was "unfair" under the applicable California statute. The analytical framework for these two

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[8] Regardless, an unproven alleged tort can hardly be called "more culpable" than the breach of a contract. Moreover, while Farmers asserts Panag was at fault in the accident, the fact is *Farmers* paid *Panag* to resolve her personal injury claim *against Hamilton*.

concepts, however, are altogether different. *See, e.g., Blake v. Federal Way Cycle*, 40 Wn. App. 302, 310-11, 698 P.2d 578 (1985) (discussing unfairness as distinct from deceptiveness). CCS also cites *McCarter v. State Farm Mut. Auto. Ins. Co.*, 473 N.E.2d 1015 (Ill. App. 1985). But McCarter's claim was dismissed because the Illinois statute at issue only applies to consumers, *see id.* at 1018, a term that is included and *specifically defined* by the Illinois Act. *See* 815 ILCS 505/1, § 1(e).

C. The Rights of Honest Businesses to Pursue Legitimate Ends By Honest Means Have Not Been Impaired

Petitioners contend that the decision below unduly impairs the ability of insurance companies to recover on their subrogation interests. This is nonsense. First, while the CPA specifies that it is not intended to prohibit reasonable practices related to the development or preservation of business, it further states "or [acts] which are not injurious to the public interest." *See* RCW § 19.86.920. Using a debt collector to deceive and intimidate people who don't actually owe money is not a reasonable practice, and is plainly injurious to the public.

Second, despite the "sky is falling" assertions, nothing in the Court of Appeals opinion prevents insurers from pursuing subrogation claims. Indeed, the only limitation of any sort is that the company must pursue its subrogation claims honestly, and without resort to deception. This does not seem like too much to ask of a business granted the privilege of pursuing its activities in Washington. Moreover, this limitation is not

something just recently fashioned by the Court of Appeals; this is the longstanding law in Washington.

In this regard, the Court of Appeals opinion here is much like the opinion in *Dwyer*, where the defendant had misrepresented the nature of a fee it was charging. The Court was careful to recognize the right of the defendant to seek to impose the fee, as separate from the permissible manner in which the defendant could pursue that fee:

> [W]e have taken care not to improperly interfere with Kislak's right to conduct its business. ... Our holding does not infringe on Kislak's right to charge a fax fee. *It merely forecloses the ability to do so in a deceptive manner.*

103 Wn. App at 548 (emphasis added). It is the same here.

Of course, Petitioners real complaint is not that they will no longer be able to pursue subrogation claims, just that it might cost them more to do so. In other words, they believe that it is not as economically efficient to pursue subrogation claims in a lawful manner as it is to pursue them through deception and intimidation. They might be correct – it could be more costly to do it lawfully. But economic efficiency is never sufficient to justify or shield fraud, deception or other illegal means to an end.

Speaking of fairness and public policy concerns, one thing Petitioners don't talk about is the unfairness their unlawful activities have on competitors. If Petitioners were permitted to reduce their costs and/or increase their recoveries through these deceptive and unlawful means, other insurers in Washington would be at a competitive disadvantage that

could be corrected only by either engaging in the sharp business practices themselves, or charging their own insureds higher premiums. Neither result is in the public's interest.

Furthermore, Petitioners' position is as clear as it is disturbing: they believe that no law should cover their plainly deceptive misconduct here, and that they should be free of any constraints or limitations when trying to extract money they unilaterally determine to be due them. It doesn't matter that the insurer sits as judge and jury on its own claim, or that here Farmers inflated that claim.[9] But as the *Dwyer* Court stated: "Our holding protects Washington citizens by ensuring that they are ... *accurately* informed about the nature and extent of their obligations...." *Id.* at 548 (emphasis added). Panag and others receiving the bogus, self-styled "Formal Collection Notices" are entitled to no less.

D. The Court of Appeals Ruling on Injury Is Consistent With the Statute and Longstanding Precedent

Farmers takes issue with the Court's ruling that Panag sustained injury cognizable by the CPA. To begin with, this grievance concerns a mere factual determination, and as such it does not merit review. In any event, the legal standard for establishing "injury" for purposes of the CPA is settled: *any level of injury*, no matter how slight or whether even quantifiable, suffices. *E.g., Mason v. Mortgage America, Inc.*, 114 Wn.2d

[9] While CCS tries to portray this procedure as entirely fair and reasonable, that Farmers tried to get nearly three times what even it thought it was entitled to amply demonstrates the mischief that would occur.

842, 854, 792 P.2d 142 (1990); *Nordstrom*, 107 Wn.2d at 740; *Sign-O-Lite Signs v. DeLaurenti Florists*, 64 Wn. App. 553, 563, 825 P.2d 714 (1992). *See also Banuelos v. TSA Washington, Inc.*, 134 Wn. App. 607, 614, 141 P.3d 652 (2006) ("[n]ominal ... trifling, de minimis" damages are sufficient for the CPA). Under this standard, Panag clearly sustained CPA injury; it is undisputed that Panag spent money out of pocket as a direct result of the collection notices.

Farmers complains about the low threshold set by the Court of Appeals. But the Court did not set this threshold, the Legislature did, as confirmed by twenty years of precedent. Farmers also tries to nitpick the nature of the costs and expenses incurred by Panag. But again, this is a mere factual grievance, not an issue for review.

It is of no significance that some of Panag expenses were incurred in connection with consulting with an attorney. These were investigative costs necessitated by the deceptive notices, and the fact that an attorney was the logical person with which to consult does nothing to change this. *See State Farm*, 92 Wn. App. at 458. In any event, Panag also spent money to purchase a credit report, which she was forced to do to protect her interests in the face of the "collection" activities that targeted her. [10]

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[10] Panag's purchase of the credit report is entirely reasonable. When a member of the Spokane Public Defender Office wrote the OIC about an apparently similar matter, she asked what to do in order "to protect [the client's] *credit* from this [CCS] agency." *See* CP 119. In *Goins v. JBC & Associates*, in a case involving Connecticut's Unfair Trade Practices Act, the court specifically noted that: "a letter of the kind sent to plaintiff [demanding an amount not reduced to judgment] could cause injury *in a variety of ways*. A consumer may respond to the letter by actually paying an amount far greater than what

V. CONCLUSION

Two businesses combined to target members of the public with deceptive and unlawful commercial activities. The Court of Appeals merely concluded the obvious: the targets of these unlawful commercial activities can avail themselves of the protections afforded by the CPA.

Petitioners, particularly Farmers, try to justify their unlawful conduct by portraying their targets as undeserving of honest business practices or the protection of the law. In essence, Petitioners argue for a sort of vigilante justice executed by corporations against anyone they perceive as miscreants. Neither Petitioner has provided any authority for this extreme position. Finally, to a great extent Petitioners, again particularly Farmers, make what are in reality public policy arguments as to what they believe the law should be, as opposed to what the law is. But such "appeals," if they are to be made, should be made to the Legislature.

For the foregoing reasons, Respondent Panag requests that the Court deny Farmers' and CCS's Petitions for Discretionary Review.

July 25, 2007.

/s/ Matthew J. Ide, WSBA No. 26002
Matthew J. Ide, WSBA No. 26002
IDE LAW OFFICE FILED AS ATTACHMENT TO E-MAIL

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is actually owed, *or may incur other expenses in challenging the debt collection effort.* 352 F. Supp. 2d 262, 275 (D. Conn. 2004) (emphasis added).

801 Second Avenue, Suite 1502
Seattle, Washington 98104-1500
Telephone: (206) 625-1326

Attorney for Rajvir Panag,
as Plaintiff/Respondent

Murray T. S. Lewis, WSBA No. 13307
LEWIS LAW FIRM
2400 East Roy Street
Seattle, Washington 98112
Telephone: (206) 223-7008

Plaintiff's/Respondent's Co-Counsel

DECLARATION OF SERVICE

I certify that on July 25, 2007, I caused to be filed with the Supreme Court, via electronic filing, the foregoing Respondent Rajvir Panag's Answer to Petitions for Discretionary Review, and caused to be sent, via first class mail, postage pre-paid, true and accurate copies to:

Stevan D. Phillips Rita Latsinova Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101-3197 *Attorneys for Petitioner Farmers Insurance Company of Washington*	John A. Granger Melissa O'Loughlin White Cozen O'Connor 1201 Third Avenue, Suite 5200 Seattle, Washington 98101 *Attorneys for Petitioner Credit Control Services, Inc.*
	Philip A. Talmadge Talmadge Law Group PLLC 18010 Southcenter Parkway Tukwila, WA 98188-4630 *Attorneys for Petitioner Credit Control Services, Inc.*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Seattle, Washington, this 25th day of July, 2007.

/s/ Matthew J. Ide, WSBA No. 26002
Matthew J. Ide

FILED AS ATTACHMENT
TO E-MAIL

OFFICE RECEPTIONIST, CLERK

From: Matt Ide [mjide@yahoo.com]
Sent: Wednesday, July 25, 2007 3:28 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Panag v. Farmers Insurance Co., et al., Case No. 80357-9

Panag Answer o 80357-9).pdf

Dear Clerk of the Court:

Attached please find the following Answer that we are submitting for electronic filing.

Case Name: Rajvir Panag v. Farmers Insurance Co. of Washington, et al. Case No.: 80357-9

Filing: Respondent Rajvir Panag's Answer to Petitions for Discretionary Review

Person Filing: Matthew J. Ide, WSBA No. 26002
Tel.: 206-625-1326
Email: mjide@yahoo.com

Ide Law Office
801 Second Avenue, Suite 1502
Seattle, Washington 98104
Tel: (206) 625-1326
Fax: (206) 622-0909

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